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Congress of the United States

House of Representatives

Washington, DC 20515

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12TH DISTRICT, NEW YORK

July 24, 2000

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Ms. Anne Goode
Director, Office of Civil Rights
United States Environmental Protection Agency
401 M Street, SW
Washington, D.C. 20460

6R-00 R2

Dear Ms. Goode:

This letter serves as a complaint based upon Title VI of the Civil Rights Act of 1964, U.S. C. §2000d et seq. New York. I write this letter on behalf of myself and the following community organizations: Concerned Citizens of Withers Street, Cooper Park Tenants Association, El Puente, Hispanos Unidos de Greenpoint, Los Sures Housing Corporation, North Brooklyn Development Corporation, St. Cecilia's Church Parish Council, Make A Difference Community Association Project (MADCAP), Metropolitan Housing Tenants Association, Neighbors Against Garbage (NAG), and Williamsburg/Greenpoint Organizations United for Trash Reduction and Garbage Equity (OUTRAGE).

The basis of this complaint arises from the discriminatory siting and concentration of waste transfer stations and other hazardous substance handling facilities in the **Greenpoint-Williamsburg** area of **Brooklyn**. It is our assertion that the saturation of these facilities have had an adverse effect on the health and environment on the persons within this community.

ASSERTIONS

Based upon the conduct of the New York City Department of Sanitation (DOS), we assert that 1) DOS, without having performed an environmental review as required by the State Environmental Quality Review Act (SEQRA), found at Article 8 of the Environmental Conservation Law (ECL), and regulations promulgated thereunder, is unlawful, arbitrary, capricious, and an abuse of discretion; 2) DOS issued the permit in violation of the siting regulations for new and expanded solid waste transfer stations (siting regulations) codified at Chapter 4 of Title 16 of the Rules of the City of New York (RCNY); 3) DOS does not have authority to issue a permit because the siting regulations are invalid under Local Law 40, found at New York City Administrative Code §16-

131(b), and SEQRA.

Demographics

According to the 1990 Census, approximately 156,000 people live in this community. The population according to the 1990 Census was 50% White, 2.8% Black; 44.6% Hispanic; and 2.6% other. The Hispanic population was proportionately large in comparison with Brooklyn and New York City as a whole, where persons of Hispanic origin accounted for 20.1% and 24.4% of the population respectively.

Unemployment in this area is 10.6% which is a full percentage point higher than the New York City figure of 9.0%. The population of the area is relatively poor. The median household income for the Williamsburg waterfront area is \$16,409. The average income of the area is \$19,891 in comparison to \$25,684 for Brooklyn, and \$29,805 for New York City, and reflects a combination of low educational attainment, relatively low labor force participation, a high proportion of lower skilled workers and a moderately high unemployment rate.

Based upon the 1990 Census, 45% of the residents in the area live below the poverty level, compared with 22.3% in Brooklyn and 18.9% in New York City.

NEGATIVE CUMULATIVE IMPACT

Truck Traffic

Traffic and related health and environmental concerns are prominent in Greenpoint/Williamsburg because a large number of trucks are needed to transport waste to a large number of WTSs (reportedly 550 trucks and 15 WTSs). The high volume of truck traffic is aggravated by traffic on Brooklyn Queens Expressway and Williamsburg Bridge.

Inequitable Zoning

Residents are concerned that their community which is made up largely of minority resident sand than half of which have incomes below the poverty level—are not zoned similarly to more affluent communities. They noted that permitted waste transfer stations (WTSs) must be in industrial zones; however, more affluent communities have been re-zoned to become exclusively residential, while low-income and minority communities are forced to live with industry.

Negative Zoning Patterns

Predetermination to locate negative land-use facilities (including WTSs) in or adjacent to certain communities occurs when these facilities are permitted only within certain areas. Communities typically predetermined for negative land uses include residential zones that were grand-fathered into industrial zones, residential zones that are adjacent to industrial zones, or zones that permit a mixture of residential, commercial, and certain industrial activities. These communities predominantly consist of residents that are poor and of color. Predetermination is exacerbated by rezoning decisions that eliminate negative land uses in affluent white communities, thereby further limiting WTSs to low-income communities and communities of color.

The limited areas in which WTSs can be established are permitted generally "as a matter of right." This means that the local permitting agencies have no discretion to deny such use, nor do impacted communities have the opportunity to review or object to such use.

Currently there is no systematic process to safely and fairly select sites for WTSs. Along with predetermination, the lack of a systematic process has led to the clustering of these facilities in poor communities and minority communities. Factors that contribute to the problem of site selection of WTSs include the bifurcation of the commercial and residential solid waste streams (often by municipal government action), the large number of commercial service providers, localized increases in tipping fees, flow control and other manipulations of market choice, and inadequate and unclear regulatory criteria. The fact that twenty-four WTSs's are located in the 5 ½ mile radius of the Greenpoint/Williamsburg community, is proof positive of the lack of due consideration given to site selection.

DISCRIMINATORY ACTS WITHIN 180 CALENDAR DAYS

The permits issued for the following facilities are in violation of the aforementioned state and city regulations.

<u>Name & Address of Permit Holder</u>	<u>Starting Date of Permit</u>	<u>Ending Date of Permit</u>
BFI Waste Systems of New Jersey, Inc. 575 Scholes Street Brooklyn, NY 11211	10/29/99	10/28/00
BFI Waste Systems of New Jersey, Inc. 575 Scholes Street Brooklyn, NY 11211	10/29/99	10/28/00
Browning Ferris Industries of New York, Inc 598-636 Scholes Street Brooklyn, NY 11237	1/31/99	1/30/00

BFI Waste Systems of New Jersey, Inc. 115 Thames Street Brooklyn, NY 11237	5/2/99	5/1/00
Astoria Carting Company, Inc. 538-545 Stewart Avenue Brooklyn, NY 11222	7/22/99	90 days from date of issuance (subject to automatic extensions as specified below) Not to exceed 7/21/00.
Casalino Interior Demolition Corporation 213 Meadow Street Brooklyn, NY 11237	7/28/99	90 days from date of issuance (subject to automatic extensions as specified below) Not to exceed 7/27/00.
City Recycling Corporation 151 Anthony Street Brooklyn, NY 11222	6/28/99	90 days from date of issuance (subject to automatic extensions as specified below) Not to exceed 6/25/00.
Cooper Tank & Welding, Inc. 222 Maspeth Avenue Brooklyn, NY 11211	1/5/00	1/4/01
Hi-Tech Resource Recovery, Inc. 130 Varick Avenue Brooklyn, NY 11237	6/15/99	6/14/00
IESI NY Corporation 548 Varick Avenue Brooklyn, NY 11222	9/1/99	90 days from date of issuance (subject to automatic extensions as specified below)
Point Recycling, Ltd. 686 Morgan Avenue Brooklyn, NY 11222	7/2/99	90 days from date of issuance (subject to automatic extensions as specified below) Not to exceed 7/1/00.

<u>Name & Address of Permit Holder</u>	<u>Starting Date of Permit</u>	<u>Ending Date of Permit</u>
Waste Management of New York, LLC 123 Varick Avenue Brooklyn, NY 11237	6/15/99	6/14/00
Waste Management of New York, LLC 215 Varick Avenue Brooklyn, NY 11237	6/15/99	6/14/00

Waste Management of New York, LLC 232 Gardner Avenue Brooklyn, NY 11237	10/20/99	10/19/00
Waste Management of New York, LLC 485 Scott Avenue Brooklyn, NY 11222	6/15/99	90 days from date of issuance (subject to automatic extensions as specified below)
Waste Management of New York, LLC 75 Thomas Street Brooklyn, NY 11222	11/7/99	90 days from date of issuance (subject to automatic extensions as specified below)

NEW YORK CITY REGULATORY AUTHORITY

Waste transfer facilities are governed by Title 16 Chapter 4 of the Rules of the City of New York (RCNY), Department of Sanitation, regulates non-putrescible solid waste transfer stations. This regulation requires that any person who owns, operates, maintains, or controls a non-putrescible solid waste transfer station shall comply with the following: 1) the state Environmental Conservation Law and all permit conditions stated in any permit issued; 2) Titles 16 and 24 of the Administrative Codes of the City of New York (Air Pollution and Noise Control); 3) Subchapter 3 of Chapter 1 of Title 26, and Chapter 1 of Title 27 of the Administrative Code of the City of New York (Building Code); 4) the Zoning Resolution of the City of New York; 5) the New York City Health Code; 5) and all other applicable local and state laws and rules including general transportation and vehicular transport routes.

Construction and demolition debris waste transfer stations

Permits are required for construction and demolition debris transfer stations, and such stations must be comply with Title 16 RCNY §14-06 and 16 RCNY §4-05. This regulation requires that adequate ventilation and sufficient space for ingress and egress (including the ability to accommodate emergency vehicles) and facilitating complete inspection of the transfer stations must be maintained. In addition, construction and demolition debris transfer stations must be operated so as to avoid any nuisance or condition hazardous to public health or safety and must be kept free of all vectors, such as rodents, insects, other pests, and conditions conducive to vectors. They also are required to have on-site proof of weekly engagement of certified exterminators. Transfer stations are not permitted to emit odors (including those of deodorizing materials) so as to violate the odor or air pollution codes of the Administrative Code of the City of New York. In an unenclosed facility located 300 feet or less from a residential zone, non-putrescible waste may not be maintained in piles greater than 8 feet high. Bay doors are required to be kept closed unless vehicles are entering or exiting. Vehicle exhausts must be vented through filters, and no burning is permitted at transfer stations. Permits are required for fill material transfer stations by 16 RCNY § 4-07. Operation and maintenance of fill material transfer stations are governed by 16 RCNY §4-08.

Putrescible solid waste transfer stations

Putrescible solid waste transfer stations also are regulated by the Rules of the City of New York. 16 (RCNY §4-11). Like non-putrescible solid waste transfer stations, putrescible solid waste transfer stations are required to comply with all state and local laws and rules, including general transportation and vehicle transport routes. Permits must include written plans for the control of noise and odors (16 RCNY §4-14). Permits are subject to suspension and revocation for violation of the terms of Chapter 4 or any applicable section of the Administrative Code or any other applicable permit condition, law, or rule. Design and equipment requirements are set forth in 16 RCNY §4-16; operation and maintenance rules are set forth in 16 RCNY §4-17.

Permit Program

Title 16 of NYCAC mandates permits for operators of dumps, non-putrescible and putrescible waste transfer stations, and fill material operations (16 NYCAC §116-130). This section prohibits any person or public agency other than the Department of Sanitation from operating a dump, solid waste transfer station, or fill material operation without a permit. The Department's Commissioner has the power to adopt rules for the operation of waste transfer stations and is required to adopt rules in consultation with the commissioners of health and environmental protection for the protection of public health and the environment (16 NYCAC §16-131). These rules can include regulation of siting, hours of operation, noise, odor control, ventilation, and other matters pertaining to waste transfer station operation.

NEW YORK STATE REGULATORY AUTHORITY

In New York City, state and local laws govern the operation of waste transfer stations. Titles 9, 11, and 13 of Article 27 of the state Environmental Conservation Law (ECL) provide for the treatment and disposal of solid and hazardous waste through the Solid Waste Management Plan which is updated and overseen by the New York State Department of Environmental Conservation (NYSDEC). Article 71 provides strong enforcement authority for the Environmental Conservation Law and prohibits, among other things, "depositing unwholesome substances on or near a highway or route of public travel, or on land or water" (NY ECL §71-3501). Violation of ECL §71-3501 is punishable as a misdemeanor. NYSDEC is authorized to regulate the operation of solid waste management facilities to prevent or reduce air, water, and noise pollution as well as odor, litter, flies, vermin, and other conditions affecting the public health, safety and welfare.

NYSDEC has issued detailed regulations pertaining to the operation of waste transfer stations. Construction and demolition debris landfills are governed by 6 NYCRR §360-7. This section also governs land-clearing debris landfills of 3 acres or less in size. Construction and demolition debris processing facilities are governed by 6 NYCRR §360-16. Regulated medical waste transfer stations are governed by 6 NYCRR §360-10,17; and a permit is required to construct and operate these facilities. Facilities that transfer or process solid waste are governed by 6 NYCRR §360-11. A permit is required to construct and operate a solid waste transfer station.

Design requirements for waste transfer stations are set forth in 6 NYCRR §360-11.3, and operational requirements are found in §360-11.4.

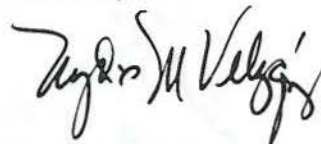
FEDERAL AUTHORITY

Pursuant to RCRA Sections 6942 and 6947, EPA has sufficient authority to initiate a better planning process for WTS siting and operation to reduce the impact on adjacent communities and the environment. In addition, EPA has jurisdiction over WTSs under Title V of the Clean Air due to the odors and particulate matter which emanate from these facilities.

CONCLUSION

Based upon the aforementioned, we ask that you exercise your authority to correct the disparate impact felt by the Greenpoint-Williamsburg community in the 12th Congressional District of New York. We ask that you immediately call upon the City to correct its oppressive conduct with regard to the permitting of waste transfer stations and other facilities that have the potential to have a negative impact on the surrounding community. In addition, we implore you to conduct an assessment of the State of New York's oversight of the City's waste management plan in light of its undue burden on minority and low-income communities as well as its blatant violation of state law.

Sincerely,



Nydia M. Velázquez
Member of Congress
12th District of New York

Additional signatories:

The Honorable Martin Connor - New York State Senate
The Honorable Nellie Santiago - New York State Senate
The Honorable Kenneth Fisher - New York City Council

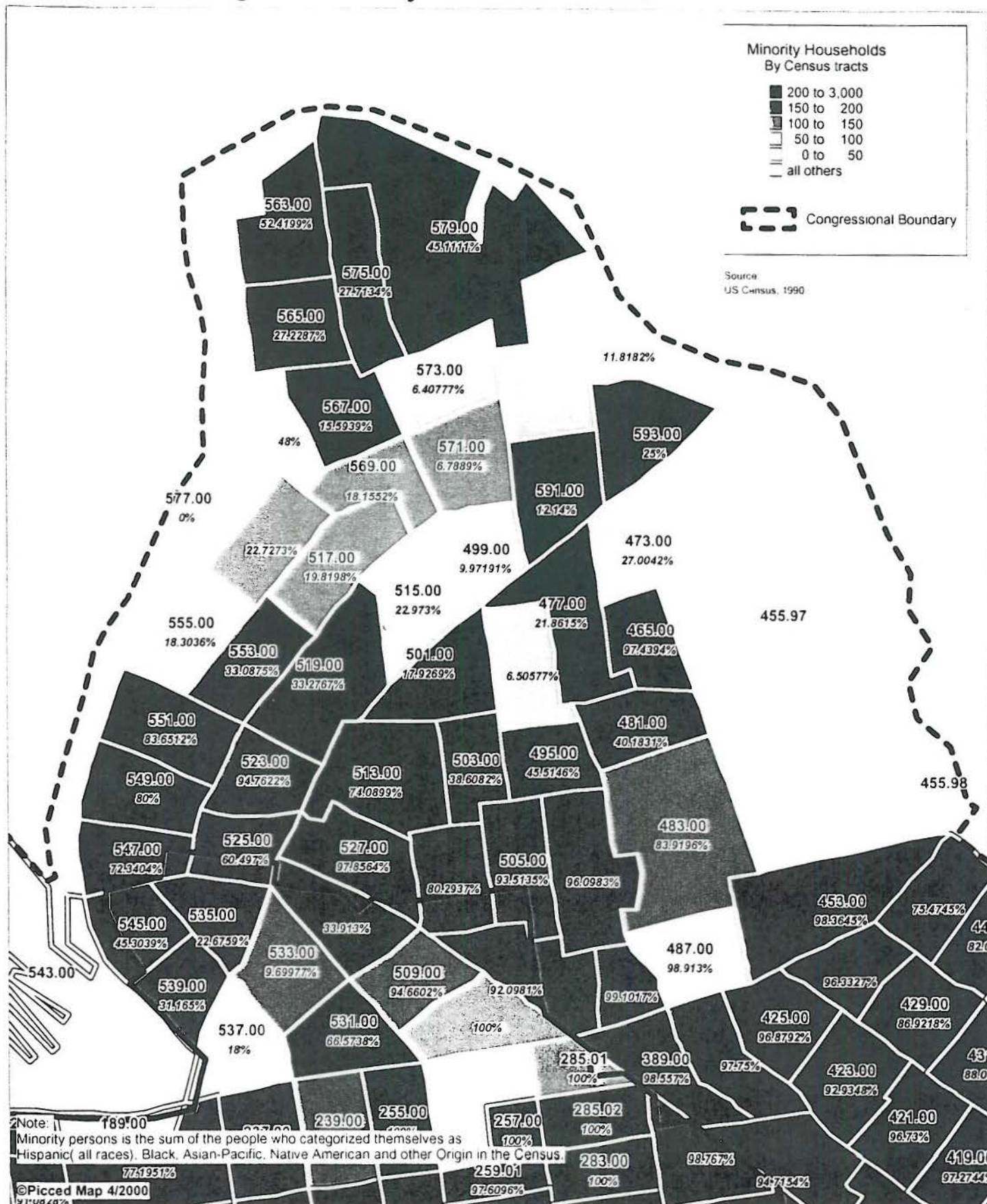
Attachments

Environmentally Sensitive Sites



Greenpoint/Williamsburg

Williamsburg Minority Households



Land Use

